

# EXHIBIT H

*WILLIAM J. WAGNER vs.  
CHIARI & ILECKI, LLP.*

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*WILLIAM ILECKI, ESQ.  
October 5, 2016*

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*Min-U-Script® with Word Index*

1       UNITED STATES DISTRICT COURT  
2       WESTERN DISTRICT OF NEW YORK

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4       WILLIAM J. WAGNER,

5                  Plaintiff,

6                  vs                              Docket No. 15-CV-633-JTC

8       CHIARI & ILECKI, LLP,

9                  Defendant.

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11      Examination Before Trial of WILLIAM ILECKI, ESQ., held  
12      pursuant to the Federal Rules of Civil Procedure, in  
13      the law offices of CONNORS LLP, 1000 Liberty Building,  
14      424 Main Street, Buffalo, New York, on Wednesday,  
15      October 5, 2016 at 10:08 a.m. before Molly Fenske,  
16      Notary Public.

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1 APPEARANCES:

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5 Appearing for the Plaintiff.

6 CONNORS LLP  
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Appearing for the Defendant.

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(Whereupon, the following stipulations were entered into by the respective parties:

3 It is hereby stipulated by and between  
4 counsel for the respective parties that the oath of  
5 the referee is waived, that filing and certification  
6 of the transcript are waived, and all objections,  
7 except as to the form of the question, are reserved  
8 until the time of trial.)

11 MR. ANDREWS: Yes.

12 THE REPORTER: Usual stipulations or read  
13 and sign?

14 THE WITNESS: Usual stipulations are fine  
15 with me because it allows me the opportunity to review  
16 it.

17 MR. WOODARD: Yeah, perfect.

18 | (A recess was taken.)

19 THE REPORTER: Would you like sixty days?

20 MR. WOODARD: That would be great. Is  
21 that okay?

22 THE WITNESS: Yeah.

23 WILLIAM ILECKI, ESQ., 371 Starin Avenue,  
24 Buffalo, New York 14216, having been duly called and  
25 sworn, was examined and testified as follows:

1                   MR. ANDREWS: Mr. Ilecki, my name is Seth  
2 Andrews. I'm the attorney for the plaintiff, William  
3 J. Wagner, in this matter. Mr. Wagner filed a lawsuit  
4 in the Western District of New York naming Chiari and  
5 Ilecki as a defendant alleging violations of the Fair  
6 Debt Collection Practices Act.

7                   You've been designated as the 30(b)(6)  
8 witness for today's deposition. I will be asking you  
9 questions in that capacity. You've also been noticed  
10 as a 30(b)(1) witness. I'll be sure to indicate if my  
11 question pertains to you. Otherwise, you should  
12 assume that it's the 30(b)(6) as you're testifying; is  
13 that understood?

14                  THE WITNESS: I understand, so you're  
15 telling me you will reference specifically if I'm to  
16 answer as an individual witness?

17                  MR. ANDREWS: Correct. Otherwise, assume  
18 the question is posed --

19                  THE WITNESS: I understand.

20                  MR. ANDREWS: Before we begin, I'm sure as  
21 an attorney you know this, but I just want to cover  
22 some ground rules.

23                  I'm going to ask you some questions. Do  
24 your best to provide me with responses.

25                  Please try to wait until I finish before

1 you answer, even if you think you know where I'm going  
2 or, you know, so we can keep a clear record for the  
3 court reporter.

4 If at any time you need a break, please  
5 let me know. I just ask that if there's a pending  
6 question, you answer it prior to any break.

7 You've got to give verbal responses, and  
8 that's pretty much it.

9 EXAMINATION BY MR. ANDREWS:

10 Q. Have you -- is there any reason you can't  
11 provide truthful and accurate testimony today?

12 A. There is no reason I cannot provide truthful  
13 and accurate testimony to the best of my knowledge.

14 Q. No medications that would prevent recall?  
15 You're not on any medication that would...

16 A. I'm not on any medication that would prevent  
17 recall.

18 Q. What's your date of birth?

19 A. [REDACTED] 1964.

20 Q. Where were you born?

21 A. Buffalo, New York.

22 Q. And what's the highest level of education  
23 you've obtained?

24 A. Graduated from law school.

25 Q. And where did you graduate from?

1           A. University of Buffalo.

2           Q. Do you recall when you graduated?

3           A. Yes, 1989.

4           Q. And in preparation for today's examination, did  
5 you discuss the case with anyone other than your  
6 attorney?

7           A. I did not discuss the case in detail with  
8 anyone else, although there was a meeting at my office  
9 with my staff that is scheduled to be testifying today  
10 with my attorney.

11          Q. So the attorney was present for this meeting?

12          A. Yes.

13          Q. Okay. Did you have any discussions with anyone  
14 outside of your attorney in preparation for today's  
15 deposition?

16          A. I did have discussion with the people that are  
17 testifying today.

18          Q. Outside of the presence of your attorney?

19          A. Correct.

20          Q. What did you discuss?

21          A. Scheduling with them, how we would cover my  
22 office while they're gone, and also, we discussed  
23 whether I might be present during their testimony.

24          Q. Did you discuss any specific defenses or in any  
25 way discuss any factual or legal issues of the case?

1       A. With Melissa Overbeck I did, but as to the  
2 other individuals, no.

3       Q. What did you discuss with Melissa?

4       A. With Melissa Overbeck, we reviewed the  
5 responses to the disclosure demands both by the  
6 defendant and by the plaintiff, and we also did  
7 discuss generally how -- whether I would be present  
8 when she was testifying, and also, you know, the  
9 timing of her testimony just as I indicated with the  
10 other individuals.

11      Q. But nothing with respect to anything specific  
12 in terms of -- you mentioned responses. Were there  
13 any particular responses that you discussed?

14      A. It was a very general conversation in terms of  
15 me advising her I was going to review the responses  
16 before I testified and she should also review the  
17 responses before she testified.

18      Q. So general housekeeping; fair to say?

19      A. Yeah. To cut to the case, I did not tell her  
20 how I was going to testify or did not tell her how she  
21 should testify.

22      Q. No, I assumed that. I was just wondering if  
23 there was certain specific things that you guys  
24 discussed, but it sounds like it was just more  
25 scheduling; fair to say?

1       A. Except with Melissa, we did discuss the fact  
2 that we would both review the documents provided to  
3 us, both by -- the plaintiff's responses to discovery  
4 demands, those documents were provided to us by our  
5 attorney, as well as our responses, the defendant's  
6 responses to plaintiff's discovery demands.

7       Q. Did you review those responses separately or  
8 jointly?

9       A. Separately.

10      Q. Have you ever testified in court before?

11      A. Yes.

12      Q. How many times?

13      A. In court, I believe twice.

14      Q. And that was as a party or a witness?

15      A. One was a party and one was as a witness.

16      Q. And the party, were you a plaintiff or the  
17 defendant?

18      A. I was the plaintiff.

19      Q. And again, this is Chiari and Ilecki we're  
20 speaking of; right? We're not talking about William?

21      A. Well, you asked me if I was here testifying, if  
22 I ever testified, and I guess your point was -- I'm  
23 talking about unless you specified that I was talking  
24 about me individually, that I would be testifying as a  
25 representative of Chiari & Ilecki.

1           Q. Let me rephrase so we're clear.

2           A. But I can't imagine how Chiari & Ilecki could  
3 testify, so the question has to be about me  
4 personally. The firm can't testify.

5           Q. Well, the firm can have a representative, you  
6 know?

7           A. But you asked if I ever testified.

8           Q. In your capacity as the firm, not you, not Bill  
9 Ilecki being a named --

10          A. In my capacity as a representative of the firm,  
11 I do not believe I've ever testified in court.

12          Q. Have you ever provided any prior deposition  
13 testimony in your capacity as a principal of the firm?

14          A. I did testify once, so the answer is yes. It  
15 was a predecessor firm. The firms merged, so yes. If  
16 you're counting Chiari & Ilecki as the same entity  
17 that merged into Chiari & Ilecki, yes, I did testify.

18          Q. And what was that case involving?

19          A. That case involved a malpractice claim against  
20 the firm relative to real estate transaction.

21          Q. The other instance I believe you said you  
22 testified as a witness; is that correct?

23          A. What other case?

24          Q. You said -- I don't want to misconstrue your  
25 testimony. I thought you said that you testified as a

1 party and also as a witness?

2 A. Correct, but as you pointed out, not related to  
3 the firm, not related to an action involving the firm.

4 Q. Okay. What was that action regarding?

5 A. Just to be clear, so now you want me to answer  
6 as a personal witness?

7 Q. Yeah, because you're saying that you were a  
8 witness not involved with Chiari & Ilecki.

9 A. So now you're asking me to testify personally  
10 as witness?

11 Q. Correct.

12 A. And you're asking me the nature of the actions  
13 where I testified?

14 Q. As a witness.

15 A. The one action I testified as a party was my  
16 divorce, and the other action where I testified as a  
17 witness was a -- involved a motion to vacate a  
18 judgment.

19 Q. That your firm wasn't involved in that motion?

20 A. My firm -- that's not the question that you  
21 asked though. My firm was not a party.

22 Q. So you were a witness and provided testimony  
23 regarding a motion to vacate a judgment, and was that  
24 judgment creditor represented by your office?

25 A. Yes, correct.

1       Q. After you graduated law school, do you recall  
2 where you first were employed?

3       A. Yes, I was employed -- I was a law clerk for  
4 Joseph Ryan Gold.

5       Q. And how long did you do that for?

6       A. I had been a law clerk for him just a little  
7 over two years.

8       Q. And then after clerking, what came next?

9       A. Then I went to work for a company called Action  
10 Management, Incorporated.

11      Q. What kind of work do they do -- did they do?

12      A. They were a collection agency.

13      Q. Collection agency, okay.

14      Were you in-house counsel?

15      A. In-house counsel, yes.

16      Q. How long did you work for them for?

17      A. About six months, maybe five months.

18      Q. And then what was after?

19      A. Then I -- my next job was with -- at the time  
20 was Horwitz and Frankel was the name.

21      Q. And how long were you with them for?

22      A. That's the firm that continues to this day.

23      Q. All right, so you've been -- three different  
24 transitions or is there more?

25      A. When you say transitions, you mean three

1 different -- I've had since -- since graduating from  
2 law school, I've had --

3 Q. Your firm, your current firm went through three  
4 different name transitions?

5 A. Okay. The firm was initially Horwitz and  
6 Frankel. The next -- and that's F-R-A-N-K-E-L, and  
7 Horwitz is H-O-R-W-I-T-Z; changed the name to Horwitz,  
8 Frankel and Ilecki; then Horwitz and Ilecki; and then  
9 we merged in 2006 to become Bulan, B as in Brian,  
10 U-L-A-N as in Nancy, Chiari, Horwitz and Ilecki; and  
11 then we shortened the name in 2010 to Chiari & Ilecki.

12 Q. Starting when it was first Horwitz to the  
13 present, Chiari & Ilecki, how long has your tenure  
14 been with the firm?

15 A. I believe twenty-six years, twenty-five, maybe  
16 a little less than twenty-five years or twenty-six --  
17 maybe a little less than twenty-six years, more than  
18 twenty-five years.

19 Q. And during that time, this is now a question  
20 for you as a (b)(1) witness, does your practice -- did  
21 your practice from beginning to end involve the  
22 collection of debts?

23 A. Yes.

24 Q. Does Chiari & Ilecki handle any other type of  
25 matters besides debt collection?

1       A. Yes.

2       Q. What other matters, generally speaking?

3       A. Landlord-tenant, some minor estate and real  
4 estate.

5       Q. The vast majority is debt collection though?

6       A. The majority is debt collection, yes.

7       Q. And approximately how many employees are there  
8 at Chiari & Ilecki?

9       A. Thirteen.

10      Q. How many attorneys are there at Chiari &  
11 Ilecki?

12      A. There are five attorneys in the firm. We have  
13 two attorneys that we have in an of counsel position.

14      Q. Do those two of counsel count for the thirteen?

15      A. No, they're not employees. They don't count as  
16 the five either.

17      Q. So eight non-attorney employees?

18      A. No, you asked how many attorneys. There are  
19 two partners, three attorneys.

20      Q. And then my next question is how many if -- you  
21 said thirteen; right? So eight non-attorney  
22 employees?

23      A. That would be ten. The partners aren't  
24 employees.

25      Q. You work for a living.

1           A. Not as an employee, it's a lot worse.

2           Q. Are employees at Chiari & Ilecki trained in  
3 Fair Debt Collection Practices Act compliance?

4           A. Yes.

5           Q. Who trains them?

6           A. I do primarily. We have also had the employees  
7 take and have to pass a course in Fair Debt Collection  
8 Practices Act law.

9           Q. Is that course administered by a third-party or  
10 is it internal?

11          A. It was a third-party.

12          Q. Is that still the policy today?

13          A. Yes, yeah.

14          Q. At the time of the allegations in the  
15 complaint, February 2015 through June 2015 --

16          A. Before you finish, the attorneys also attend  
17 seminars too.

18          Q. Okay. Was that policy also in place during  
19 that time period as well?

20          A. During the time period of the --

21          Q. Of the alleged --

22          A. -- relevant allegations in this action, yes.

23          Q. Okay. What is the process if someone doesn't  
24 pass the exam?

25          A. I don't think we've ever had somebody who

1 didn't pass the test, everybody has. They wouldn't be  
2 allowed to handle any collections communications.

3 Q. Is that test --

4 A. With debtors, with debtors.

5 Q. Is that test provided prior to they -- they  
6 start working active accounts?

7 A. Well, there's a big difference between working  
8 an account and communications with debtors because we  
9 can have someone that inputs mail. You might call it  
10 working an account. I might even call it working an  
11 account, but it doesn't mean there's a communication  
12 with the debtor. We can have somebody answer the  
13 phone and simply transfer calls. They may not have  
14 taken that test yet, although they would have received  
15 my initial training and they would have received  
16 materials that I provide, which basically are copies  
17 of the law, of the statutes, state and federal,  
18 effecting debt collection.

19 Q. So does an employee, before they can have any  
20 contact with a debtor or any what I'll call meaningful  
21 work product done on the account, skip tracing,  
22 identifying assets, things of that nature, do they  
23 have to pass this third-party test?

24 MR. WOODARD: Form.

25 THE WITNESS: Yeah, I'm going to ask you

1 to clarify that because you're presuming that the  
2 employees do those things. The question presumes it.  
3 Maybe it would help -- I'm not -- just to speed things  
4 up, it might help if I explained the skip tracing  
5 portion.

6 BY MR. ANDREWS:

7 Q. Well, do non-attorneys skip trace?

8 A. Generally, no.

9 Q. Okay.

10 A. The attorneys and primarily me, I do all the  
11 initial skip tracing on every file.

12 Q. Did you do it on Mr. Wagner's?

13 A. On Mr. Wagner's file, yes. Now, let me just  
14 state this. Mr. Wagner's file is so old that it may  
15 have been sued by a -- by our predecessor firm. It  
16 may have been sued by Goldstein, Bulan and Chiari. So  
17 it was the firm we merged with, but once the file was  
18 placed in our system, I reviewed the file.

19 Q. Once it was placed in the Chiari and --

20 A. Once we -- right, correct, so I would have  
21 reviewed the files initially, which is the process  
22 that we have. Now, you had asked about skip tracing.

23 Q. Hang on one second, I want to...

24 A. I just want to -- I have to complete the  
25 answer.

1           There are two paralegals that I have trained to  
2 skip trace. They do very little of it, but they have  
3 been starting to review our records for skip tracing  
4 purposes.

5           Q. Did either of those individuals have any skip  
6 tracing activity done on Mr. Wagner's file?

7           A. No.

8           Q. This is a document that was produced by the  
9 defendant in response to plaintiff's discovery  
10 demands. It's bates labeled Chiari 164, 165 and 166.  
11 Do you see that?

12          A. I see 164. I see 165 and I see 166, yes.

13          Q. Can you explain to me what this is?

14           MR. WOODARD: Are we marking this or no?

15           MR. ANDREWS: No, not yet.

16           THE WITNESS: This document is a print-out  
17 of an Excel spreadsheet that details the -- we call  
18 them events, things that happen on a file that are  
19 noted on our Microsoft Access database program. It's  
20 a proprietary program, and this document relates to  
21 the events on the William J. Wagner, Junior file that  
22 we have where our client is MJ Peterson, LLC.

23           (Whereupon, Exhibit Plaintiff's A, an  
24 events sheet, was marked for identification.)

25 BY MR. ANDREWS:

1       Q. Mr. Ilecki, you previously testified that you  
2 do the skip tracing on this account; correct? Initial  
3 skip tracing?

4       A. The initial -- the initial account. As I've  
5 indicated, this account was so old it actually was  
6 initially opened and a judgment taken by Goldstein,  
7 Bulan and Chiari.

8       Q. So when Chiari & Ilecki received it, it was in  
9 a judgment status?

10      A. Correct. Well, again, I have to clarify it.  
11 After the merger or before the merger it was in a  
12 judgment status, yes.

13      Q. So did you do any skip tracing during the time  
14 periods that are indicated on this document, which  
15 would be from September of 2006 through June of 2015?

16      A. The skip tracing would have occurred before the  
17 file was even converted, the initial skip tracing.

18      Q. I understand that. I'm saying did you do an  
19 additional skip tracing on this account?

20      A. Myself personally, it does not look like I did  
21 any work on the file whatsoever.

22      Q. So why don't you take a moment, unless you know  
23 the answer off the top of your head, and review it  
24 with respect to who did the skip tracing from  
25 September 2006 through June of 2015 for this file?

1       A. Well, I probably did the skip tracing before  
2 the file was converted.

3       Q. But I want to --

4       A. So that might have been in September. Your  
5 question was September 2016 (sic), so it may have been  
6 September in 2016 when I gave it to someone to convert  
7 on our system. See, they didn't have a computer  
8 system at Goldstein, Bulan and Chiari, so there  
9 wouldn't have been any way to keep track of what they  
10 did to review an account.

11      Q. So if we look at 164?

12      A. Okay.

13      Q. And we look at, oh, I don't know, event  
14 comment. It says --

15      A. I'm at page 164.

16      Q. Yep.

17      A. Which event?

18      Q. Event comment, and I'm going to read the  
19 comment. It says letter to server to serve. Do you  
20 see that?

21      A. If you give me a date, you'll see there are  
22 dates here.

23      Q. August 10, 2007 event date?

24      A. Okay, so August 10, 2007. I do see the  
25 document.

1 Q. It says letter to server to serve?

2 A. Correct.

3 Q. And you're serving an order to show cause?

4 A. Okay.

5 Q. Is that correct, or attempted to, attempted to?

6 A. It looks like on August 9th we received a copy  
7 of a filed order to show cause to punish the judgment  
8 debtor for contempt for non-compliance with an  
9 information subpoena, and then on August 10th a letter  
10 was sent to the server to serve that order to show  
11 cause.

12 Q. And then you received an affidavit of  
13 non-service stating that the debtor no longer lives at  
14 378 Windermere Boulevard; is that right?

15 A. It looks like on August 14, 2007 we received  
16 from our process server either an affidavit of  
17 non-service or a letter of non-service indicating that  
18 the address at 378 Windermere was not correct.

19 Q. So my question is what steps did you take to  
20 identify that address as the correct address for the  
21 debtor?

22 A. You mean initially, before we sent the order to  
23 show cause out for service?

24 Q. Yes.

25 A. At this time we had a Lexis program, and I

1 don't know if it was SmartLinx back in 2007, although  
2 I believe it was called SmartLinx in 2007. So the  
3 effort that we would have taken would have been to  
4 review that SmartLinx program to confirm that the  
5 address on Windermere was showing as a correct  
6 address, as well as to review the file itself.

7 Q. That report doesn't show up on this activity  
8 log?

## 9 | A. What report?

10 Q. The report you just testified you would have  
11 reviewed, this Lexis report; correct?

12 A. You asked me what we did to confirm this  
13 address, and I'm saying that is done -- the initial  
14 review is done before the file is even converted, so  
15 there wouldn't have been any notation because we  
16 didn't have the file in our system.

17 Q. Let's back up. So you said that there was no  
18 -- the prior incarnation of Chiari & Ilecki, Bulan,  
19 Chiari, Horwitz and Ilecki, do I have that right?

20 A. Bulan, Chiari, Horwitz and Ilecki was created  
21 in 2006. We -- our first date I think where we  
22 practiced was August 2006.

23 Q. That's the direct predecessor to Chiari &  
24 Ilecki; correct?

25 MR. WOODARD: Form.

1                   THE WITNESS: Actually, that is -- when  
2 you say predecessor, we just simply changed the name.

3 BY MR. ANDREWS:

4 Q. All right, so it's the same entity?

5 A. It's the same entity.

6 Q. This William J. Wagner file was received by the  
7 firm, and at that time, there wasn't any case  
8 management system in place?

9                   MR. WOODARD: Object to form.

10                  THE WITNESS: Yeah, I can -- there was no  
11 case management system, computerized case management  
12 system employed by Goldstein, Bulan and Chiari.  
13 Goldstein, Bulan and Chiari filed the lawsuit and took  
14 the judgment. So the judgment was in place by  
15 Goldstein, Bulan and Chiari, and they either submitted  
16 the judgment before the merger or actually obtained  
17 the judgment before the merger, so nothing would have  
18 been done by that 2006 merged firm. Nothing would  
19 have been done to obtain the judgment.

20 BY MR. ANDREWS:

21 Q. So my -- I guess what I'm trying to get at is  
22 this is the only record you have of activity done on  
23 the account. Anything prior, there was no -- there's  
24 no case management tracking of it; correct?

25 A. Okay. There are copies. There are copies of

1 documents, but there's no case management system,  
2 whether it be computerized or written, where an  
3 attorney would actually write notes of everything that  
4 happened.

5 Q. So when you previously testified that the  
6 address 378 Windermere Boulevard was determined to be  
7 the address through a Lexis search, is that from  
8 memory? Because there's no record of that as far as  
9 an activity log because there was no case management  
10 system at the time; correct?

11 A. Again, I'm going to object to the form myself  
12 because there's a lot in that question. Before a file  
13 is placed on our computer database, I review the file.  
14 I review the Lexis program. Today, it's a Westlaw  
15 program. We also have a Lexis program. We actually  
16 have both, but it's accurate today. There's no more  
17 SmartLinx, so I review those websites. That review is  
18 done before a file is placed on our computer system,  
19 so you will never see a notation before a file is open  
20 that a review is made. It's just done.

21 Q. And you know that because you're the only one  
22 that does it?

23 A. I'm not the only one that does it. My  
24 paralegal today is reviewing new files and then I  
25 review after her. I have had attorneys also review

1 files, attorneys I'm training for example. All new  
2 attorneys that start, I have them review Westlaw and  
3 Lexis. For the new attorneys, I then review what  
4 they've looked at. They will -- it's part of the  
5 training. So back in 2006, other than me, I don't  
6 know who else at that time would have also reviewed  
7 the file before the conversion.

8 Q. Okay. So is there a procedure in place then --  
9 after that initial Lexis search was done, is there a  
10 procedure in place to determine a proper address upon  
11 being notified that the address you thought was good  
12 based on your Lexis search, which turns out isn't, is  
13 there a procedure that would help you identify a good  
14 address?

15 A. Correct.

16 MR. WOODARD: I'm just going to object to  
17 I guess asking to some extent this line of questioning  
18 and asking him about procedures in place at a time  
19 that's not really relevant to the lawsuit. I'll give  
20 you some leeway, but I just do want to note the  
21 objection.

22 THE WITNESS: And I appreciate it. There  
23 have been procedures in place. To determine a correct  
24 address, you have to be notified of an incorrect  
25 address my entire practice, so that's a fact.

1               Now, I do want to say that we also run  
2 credit reports. I cannot tell here when we ran a  
3 credit report first because I don't remember when we  
4 started including the requests for a credit report in  
5 the events. The credit report used to be requested  
6 without an event being created. So in addition to a  
7 Lexis or Westlaw search, there is a review of credit  
8 reports done on every file at some point where we have  
9 a judgment just about, unless it's paid or a  
10 bankruptcy is filed.

11 BY MR. ANDREWS:

12 Q. If we go back to 164, and if we look at May 10,  
13 2011 for the event date? Are you with me?

14 A. Yep.

15 Q. And it looks like it says previous address,  
16 1571 Eggert Road, Wagner, William J.?

17 A. Okay.

18 Q. How did you determine if 1571 Eggert Road was a  
19 possible address?

20 A. Well, I again would not have been the one who  
21 would have reviewed this, but you can see prior to the  
22 May 10, 2011 events, you will see the attorneys who  
23 reviewed the file for actually over two years, over a  
24 two-year period. So I -- so they would have been the  
25 ones who determined a new address, and they would have

1       determined a new address reviewing credit reports and  
2       Lexis primarily. Of course, they could have also  
3       determined new address in this case from a PO. It  
4       looks like a PO box letter that may have gone out or a  
5       judgment letter may have gone out because you look at  
6       the event on April 7, 2011, letter, post office  
7       address request, that is a letter to the post office  
8       requesting a new address.

9           Q. And presumably then the post office provided  
10          1571 Eggert Road?

11                   MR. WOODARD: Form.

12                   THE WITNESS: Well, we have on April 14,  
13          2011, actually, I don't have -- other than the April  
14          14, 2011, you'll see the USPS PO box letter returned.  
15          It looks like no change of address that you would see  
16          on April 14, 2011.

17          BY MR. ANDREWS:

18           Q. So at this point, we're in 2011. The file was  
19          opened sometime prior to September of 2006; is that  
20          correct?

21           A. Again, the file would have been opened by  
22          Goldstein, Bulan and Chiari before September 2006.

23           Q. So we're five years in, and has there been any  
24          contact with the debtor at this point that you can see  
25          from this event log?

1       A. Well, there would have been contact with the  
2 debtor by the prior firm.

3       Q. How do you know that?

4       A. They served the debtor.

5       Q. Was he personally served?

6       A. I don't know how he was served, but he was  
7 served.

8       Q. Do you know if it was a default judgment  
9 entered?

10      A. I do not know, but I do not know off the top of  
11 my head, but it would be in the documentation.

12      Q. After entry of the judgment, do you know if  
13 there was any contact between September '06 and May of  
14 2011 with the debtor?

15      A. From September 2006?

16      Q. To May of 2011, which...

17      A. There was contact.

18      Q. What contact?

19      A. There was a letter sent to the debtor on  
20 January 13, 2007.

21      Q. For a contempt motion?

22      A. No.

23      Q. I apologize. I see, yep. That's the letter  
24 informing that Chiari & Ilecki is now handling the  
25 matter?

1       A. It is a letter informing the debtor of the new  
2 -- of the merged firm handling the matter, providing  
3 that letter also includes the CPLR 5222, notice of  
4 judgment debtor. It would have included a copy of the  
5 judgment as well.

6       Q. And that was sent certified, the debtor signed  
7 for that letter?

8       A. No.

9       Q. So you don't know whether he received the  
10 letter then?

11      A. Well, the letter was mailed to the debtor.

12      Q. I know, but what I'm trying to ask is you can  
13 mail a letter, but maybe that's not the correct  
14 address. Do you have any knowledge that he received  
15 that letter? It wasn't sent certified. He didn't  
16 sign for it; correct?

17      A. There is a presumption of mailing, so I have  
18 that knowledge.

19      Q. If that address happens to be the correct  
20 address?

21      A. What do you mean by correct address? I need to  
22 clarify that.

23      Q. Well, you can mail something and there's a  
24 presumption that whoever it's addressed to receives  
25 it, but if they're not living at that address, they

1       don't reside at that address, then they wouldn't  
2       receive it; correct?

3                    MR. WOODARD: Form.

4                    THE WITNESS: That's incorrect.

5                    MR. ANDREWS: So you can mail something to  
6        someone -- your testimony today is you can mail some  
7        -- mail correspondence to an address, and regardless  
8        of that -- whether or not in reality the person  
9        resides at that address, they're deemed to have  
10      received that?

11                  MR. WOODARD: Form.

12                  THE WITNESS: That's a different question.

13 BY MR. ANDREWS:

14       Q. I want to know what proof you have that the  
15      debtor received that letter in January of 2007.

16       A. One of the methods of proof we have is the  
17      letter was mailed and not returned.

18       Q. What -- you said one of them, what other...

19       A. The presumption of mailing.

20       Q. Is it possible that the letter was sent to that  
21      address and someone else lived there and just simply  
22      threw it away?

23       A. If you're asking me a hypothetical, that is  
24      always a possibility in every single piece of mail  
25      that's ever mailed.

1       Q. What I'm -- just to clarify, the debtor never  
2 called into the office stating he received this letter  
3 in January of 2007; correct?

4       A. In January of 2007, we have -- we received no  
5 telephone calls from the judgment debtor.

6       Q. The debtor never sent any correspondence saying  
7 he received a letter on January 13, 2007, never sent  
8 you a letter back saying I got --

9       A. That is correct. In January 2007, there's no  
10 correspondence from the debtor.

11      Q. You never received any slip from the post  
12 office, again, saying that he signed for this letter,  
13 receipt of this letter?

14      A. We would not have received a slip from the post  
15 office.

16      Q. But you didn't send it certified; correct?

17      A. We did not send the letter certified.

18      Q. All right. So let's look again at May 10,  
19 2011, and you send a letter to 1571 Eggert Road, as  
20 well as an information subpoena to that address; is  
21 that correct?

22      A. No, that would not be correct.

23      Q. I see May 10, 2011, document, letter to debtor.  
24 What address? What address was that letter sent to?

25      A. I don't know from this computer print-out what

1 address that notice would have been sent to. I might  
2 be able to determine that address however, either  
3 looking at the document or seeing if there was another  
4 address. If I had to guess, I would say we sent the  
5 letter and the information subpoena to 102 Reiman  
6 Street.

7 Q. At one point though -- well, I'm showing you a  
8 document that's been produced in response to  
9 plaintiff's request for discovery to the defendant.  
10 It's labeled Chiari 132. It's an April 4, 2011 letter  
11 addressed to William J. Wagner, Junior at 1571 Eggert  
12 Road, Amherst, New York 14226. So any indication that  
13 the debtor received this letter other than the  
14 presumption of mailing?

15 A. There is no indication that the defendant  
16 received this letter. I mean, he didn't get the  
17 letter.

18 Q. Okay.

19 A. There's an indication he did not.

20 Q. And so then next you send this letter, May 10,  
21 2011; is that right? And that's the next letter that  
22 would have went?

23 A. Correct.

24 MR. WOODARD: Chiari 138.

25 BY MR. ANDREWS:

1 Q. Yeah, Chiari 138.

2 A. Correct, Chiari 138 is a letter sent to the  
3 judgment debtor on May 10, 2011.

4 Q. Any indication that he received this letter?

5 A. Yes.

6 Q. And how do you know that?

7 A. The letter was not returned by the post office  
8 and the presumption of mailing.

9 Q. Okay. Outside of those two, again, the William  
10 J. Wagner, Junior never called in; correct? After  
11 sending out this letter?

12 A. Well, I have to look at the rest of the events  
13 to see if he ever called in. If you're asking if he  
14 called in within a month of the letter, it does not  
15 appear that we had contact from the judgment debtor in  
16 response to this letter.

17 Q. Did he ever send any -- can you tell if he ever  
18 sent any correspondence in response to this letter?

19 A. Again, it appears that there was no  
20 correspondence from the defendant -- from the judgment  
21 debtor within a reasonable time after this letter.

22 Q. And was that information subpoena, was that  
23 returned?

24 A. Which information subpoena?

25 Q. The information subpoena sent to 102 Reiman

1 Street, floor two?

2 MR. WOODARD: What's the date on this?

3 THE WITNESS: Yeah, if you're -- there's  
4 an event where an information subpoena was sent on May  
5 10th or at least created on May 10, 2011.

6 BY MR. ANDREWS:

7 Q. Same date as this letter; correct? Chiari 138?

8 A. Correct, the two would have been created at the  
9 same time.

10 Q. And sent out together?

11 A. No, not in the same -- no, not sent out  
12 together. So just to, again, to speed things up, it  
13 appears that the information subpoena was returned to  
14 my office on June 8, 2011 by the USPS unclaimed.

15 Q. And then in response, you served a subpoena or  
16 attempted to serve a subpoena on the debtor?

17 A. Well, in response, it's not a response to the  
18 post --

19 Q. June 27, 2011, the letter to server to serve?

20 A. What we did after receiving the unclaimed  
21 envelope from the postal service, we issued a subpoena  
22 to take depositions, subpoena duces tecum, and --

23 Q. The debtor exam.

24 A. And we sent that subpoena duces tecum out to a  
25 process server by letter dated June 27, 2011.

1       Q. And did that process server indicate that  
2 service was successful?

3       A. On -- no.

4       Q. What did he indicate?

5       A. Well, I'm looking at an entry from July 10,  
6 2011 where the process server stated that the  
7 defendant moved from the address at 102 Reiman Street,  
8 floor two. Well, it doesn't say he moved from 102  
9 Reiman Street, floor two, but the address where we  
10 sent the subpoena to, the debtor had moved out.

11      Q. Just handed you a document that's bates Chiari  
12 156. Is that the affidavit that you were just  
13 referring to?

14      A. This is the affidavit of the process server  
15 indicating that the judgment debtor had moved from 102  
16 Reiman Street, floor two, and that the process server  
17 was unable to serve the subpoena duces tecum.

18      Q. So and the judgment was in May of '06?

19      A. I don't know when the judgment was entered. I  
20 have no reason to doubt that, but I don't know when it  
21 was entered.

22      Q. Let's just make sure we've got the right --  
23 yeah, May of '06. Okay, so May of '06 judgment is  
24 taken and now we're at July?

25      A. Again, I just want to clarify. I'm not saying

1       the judgment was entered in May of '06. I'll accept  
2 what you're saying for the purposes of this  
3 deposition. The judgment was entered I'm sure  
4 sometime before we obtained the file.

5       Q. I'm happy to show you, but if you want to, you  
6 know, if you're going to accept --

7       A. I don't know the relevance, but I'm saying I  
8 can't just simply accept what you're telling me. I  
9 will accept for the purposes of the deposition that it  
10 was May of '06 when the judgment was entered.

11      Q. And now we're at July of 2011, and has there  
12 been any monies collected on this account?

13      A. Again, I don't know what would have been  
14 collected prior to September 12, 2006.

15      Q. From September of -- so September of '06 to...

16      A. September 12th of 2006.

17      Q. To July of 2011, any monies collected on the  
18 account to date between that time period?

19      A. No.

20      Q. So it's fair to say you had a tough time  
21 locating this guy?

22      A. That is fair to say, correct.

23      Q. Is it defendant's position as we sit here today  
24 that my client, William J. Wagner, is the debtor?

25      A. I don't know, can't answer that.

1       Q. So you can't speak one way or another whether  
2 my client, Mr. Wagner, owes the debt to MJ Peterson  
3 that you're trying to collect?

4       A. As I've answered, I cannot answer whether the  
5 plaintiff is the judgment debtor in the action MJ  
6 Peterson, LLC versus William J. Wagner, Junior.

7       Q. Showing you a document that was previously  
8 marked as an exhibit in plaintiff's deposition?

9       A. It's Exhibit H.

10                   MR. WOODARD: Exhibit H from the  
11 plaintiff's deposition, right, correct.

12 BY MR. ANDREWS:

13       Q. Yeah, have you ever seen that document before  
14 in preparation --

15       A. I probably have seen the document before, but I  
16 don't remember.

17       Q. You didn't review it in preparation for today's  
18 deposition?

19       A. I did not review this document in preparation  
20 for today's deposition.

21       Q. Is that a transcript of a judgment?

22       A. It appears to be a transcript of a judgment  
23 issued from the city court of Buffalo.

24       Q. And who is the judgment debtor?

25       A. The judgment debtor is William J. Wagner,

1 Junior.

2 Q. And what's the address?

3 A. 378 Windermere Boulevard, Amherst, New York  
4 14226.

5 Q. Thank you. So I'm going to ask you again, as  
6 we sit here today, my client, William J. Wagner, who  
7 never resided at 378 Windermere Boulevard, is he the  
8 judgment debtor?

9 MR. WOODARD: Form.

10 THE WITNESS: I don't know where your  
11 client resided, so my answer is going to be I don't  
12 know. It's the third time I've been asked.

13 MR. ANDREWS: Don't you think it's  
14 important to be able to identify who the proper debtor  
15 is?

16 MR. WOODARD: Form.

17 THE WITNESS: You're arguing.

18 MR. WOODARD: Form.

19 BY MR. ANDREWS:

20 Q. I'm just saying as a policy of Chiari & Ilecki,  
21 is it important to be able to identify?

22 A. Who the judgment debtor is?

23 Q. Yes.

24 A. Yes.

25 Q. And in this case, you can't make that

1 determination; is that correct?

2 MR. WOODARD: Form.

3 THE WITNESS: I don't have a policy of  
4 identifying people that sue me.

5 BY MR. ANDREWS:

6 Q. That's not what I asked.

7 A. Yes, it is what you asked.

8 Q. Your office was retained by MJ Peterson to  
9 collect a judgment against William J. Wagner, Junior;  
10 correct?

11 A. Goldstein, Bulan and Chiari was initially  
12 retained and then they merged into Bulan, Chiari,  
13 Horwitz and Ilecki.

14 Q. Your office is handling the account; correct?

15 A. Correct.

16 Q. And is it important to be able to identify the  
17 debtor and/or to satisfy that judgment?

18 A. Yes, I've already answered that.

19 Q. Okay. Is there a procedure in place for  
20 accounts with judgments to be able to collect on these  
21 accounts?

22 A. Yes.

23 Q. What's that procedure?

24 MR. WOODARD: Form.

25 THE WITNESS: The procedure -- the

1 question I think is so overbroad I can't answer it.

2 BY MR. ANDREWS:

3 Q. All right. We're going to go step by step. I  
4 come to you. I'm a client. I've got a judgment I  
5 want you to satisfy. What's the first step? I say  
6 Bill, I need your help satisfying this judgment.

7 A. The first step is to obtain information as to  
8 the court, obtain copies of the judgment, obtain  
9 identifying characteristics of the judgment debtor,  
10 work out a fee agreement, explain the terms of any  
11 reimbursement for disbursement, and I will tell you  
12 what you're asking involves quite a bit of detail. So  
13 I may forget some steps, but you also have to ensure  
14 that your client's legitimate, and if you work out  
15 those issues, then a search is done as to the judgment  
16 debtor.

17 Q. Okay. That's -- let's go from there.

18 A. And again, it was a relatively open-ended  
19 issue, but the search involves a review of whether it  
20 be Lexis or Westlaw, which has information as to  
21 addresses and some asset information. It may require  
22 also a review of other court documents or clerk's  
23 office documents. Usually, Westlaw or Lexis will give  
24 me clues as to additional searches that would have to  
25 be done. If I choose to take on the case and I tell

1       the client what I think the prospects are of  
2       collection and I work out the letter of engagement and  
3       obtain the consent and file the consent, after opening  
4       the file on our system, then -- and determining an  
5       address based on my research, a credit report would  
6       also be run, an employment search could be done.

7           Q. Not always?

8           A. Not always. Sometimes even a credit report  
9       can't be run, especially if you don't have a social  
10      security number.

11          Q. Do you once you've -- what you've explained as  
12       far as doing the different searches and identify what  
13       you think is a good address, do you send a dunning  
14       letter or demand letter to that debtor?

15          A. It's not a demand letter, no.

16          Q. What do you send, correspondence?

17          A. Yes.

18          Q. And what's that correspondence?

19          A. The correspondence consists of enclosing a copy  
20       of the consent, a copy of the judgment, the balance  
21       information, a notice as to the possibility of  
22       additional interest or charges -- and I'm  
23       generalizing, there are specifics -- the fair debt  
24       language and the judgment debtor notice of CPLR 5222.

25           MR. ANDREWS: Paul, I apologize, my turn

1 not to have a stapler.

2 Mr. Chiari, I just showed you a document.

3 Did you review that document prior to today's  
4 deposition?

5 MR. WOODARD: Just for the record, Chiari  
6 1 to 3.

7 MR. ANDREWS: Sorry.

8 THE WITNESS: I suspect I saw the  
9 document. I did not review the document preparing for  
10 today's deposition.

11 BY MR. ANDREWS:

12 Q. Is that the letter that you just testified a  
13 few moments ago that you would send out to the debtor,  
14 is that the type of letter?

15 A. You mean the initial letter after a file is  
16 opened by me?

17 Q. Yes.

18 A. No.

19 Q. When does that type of letter get sent?

20 A. Well, this type of letter would be sent in a  
21 lot of different circumstances. One would be if --  
22 and by the way, I'll reference this letter. This is a  
23 letter which basically encloses the 5222 notice and  
24 does provide a judgment balance, and this letter would  
25 be sent if we were to take some type of action,

1       whether it be a restraining notice or an income  
2       execution as required, issue possibly a subpoena with  
3       that restraining notice or it's a standard letter that  
4       we send when we are trying to confirm an address. If  
5       we obtain a new address, we'll often send this letter.

6           Q. Hoping that the person it's addressed to is  
7       going to contact you?

8           A. Actually, no. I mean, just hoping we can  
9       confirm the address is our primary reason for sending  
10      the letter.

11          Q. Absent the assumption of mailing, how would  
12      you --

13          A. You mean the presumption of mailing?

14          Q. I'm sorry, yeah. Thank you.

15           Absent that, if you don't expect the debtor to  
16      or the person the letter's addressed to contact you,  
17      how are you going to confirm that --

18          A. I didn't say I don't expect the debtor to  
19      contact us. I said it's not the primary purpose of us  
20      sending the letter. In fact, we don't ask for a  
21      debtor to contact us.

22          Q. What's your -- what is your intention when you  
23      send that letter to collect a debt?

24          A. It's part of a process to collect a debt.

25          Q. Okay, and you just previously testified that

1 you send that to confirm the address of the debtor?

2 A. Primarily.

3 Q. Primarily to confirm --

4 A. Actually, I didn't state that because if I'm  
5 intending on serving a restraining notice I have to  
6 send a 5222 notice, so there are many reasons why I  
7 would send this letter. One of the reasons would be  
8 to confirm an address. If I have nothing else that  
9 I'm doing on the account, this letter would often go  
10 out to confirm an address.

11 Q. And if it doesn't come back as undelivered,  
12 then Chiari & Ilecki's policy is that's a good  
13 address?

14 MR. WOODARD: Form.

15 THE WITNESS: I wouldn't say it's Chiari  
16 and Ilecki's policy that it's a good address. Based  
17 on the Lexis search or credit report search, we  
18 probably have a good reason to believe it's a good  
19 address, and I would say in most cases I would believe  
20 it's a good address, but I won't always be certain  
21 it's a good address. I'd have to look at each file.  
22 If you're asking generally, I could say generally I  
23 would presume it's a good address, but not always.

24 BY MR. ANDREWS:

25 Q. Looking at that document, the February 2, 2015

1 letter, it's addressed to William J. Wagner, Junior;  
2 correct?

3 A. Just to clarify, I'm showing February 9th.

4 Q. I'm sorry, February 9th. Thank you.

5 A. So if you're asking me if the February 9, 2015  
6 letter, Chiari 0 or Chiari 1, a letter addressed  
7 William J. Wagner, Junior, 5419 Roberts Road, Hamburg,  
8 New York 14075.

9 Q. Does a William J. Wagner, Junior live at that  
10 address?

11 A. I don't know if William J. Wagner, Junior lives  
12 at that address.

13 Q. So you sent a letter with a restraining notice  
14 to a William J. Wagner, Junior that you don't know if  
15 he lives at that address; is that correct?

16 MR. WOODARD: Object to form.

17 THE WITNESS: First of all, I didn't send  
18 a letter with a restraining notice.

19 BY MR. ANDREWS:

20 Q. Did a restraining notice go out that day?

21 A. I don't know. I'm looking at a letter.

22 There's no restraining notice with this letter.

23 Q. Well, let's look back to Chiari 165, and we  
24 look at the event date of 2/9/2015?

25 A. Okay.

1       Q. And there's a letter to debtor and information  
2 subpoena to debtor?

3       A. Correct.

4       Q. So you did send out an information subpoena on  
5 February 9, 2015?

6       A. First of all, I didn't send out an information  
7 subpoena on February 9, 2015. Our records reflect the  
8 fact that an information subpoena was prepared on  
9 February 9, 2015.

10      Q. So it was prepared, but not sent?

11      A. I'm not saying it wasn't sent. I'm saying I  
12 didn't do that.

13      Q. I'm not -- you're not testifying as to Bill  
14 Ilecki. I'm saying the firm, right, as the 30(b)(6)  
15 witness did -- did --

16      A. Well, I can testify as a thirty -- listen, I'm  
17 testifying still on my own personal knowledge. I'm  
18 reading the same thing you're reading. An information  
19 subpoena was prepared by Melissa Overbeck. I believe  
20 she would have signed the information subpoena  
21 immediately after preparing and provide that document  
22 to a legal assistant to mail. There's documentary  
23 proof of the mailing.

24      Q. So it was sent out then?

25      A. I believe it was sent out, correct.

1       Q. Okay. That February 9, 2015 letter, that  
2 wasn't mistakenly sent to that address, was it?

3       A. The -- if you're talking about the letter which  
4 is Chiari 1, the address or the letter is addressed to  
5 William J. Wagner, Junior, 5419 Roberts Road, Hamburg,  
6 New York 14075, that was intentionally -- that  
7 information is intentionally placed on this letter,  
8 and the letter --

9       Q. At that address?

10      A. Correct, the name and address.

11      Q. You intended to send that letter to the person  
12 residing at that address?

13            MR. WOODARD: Object to form.

14            THE WITNESS: Melissa Overbeck would have  
15 prepared this letter.

16       BY MR. ANDREWS:

17       Q. But what I'm --

18      A. There's no reason to believe she did not intend  
19 to send the address -- send the letter to William J.  
20 Wagner at the address provided on Chiari 1.

21      Q. What I'm asking though is your intention was to  
22 send that letter to whoever resided at that address?

23            MR. WOODARD: Object to form.

24            THE WITNESS: Yeah, because you're asking  
25 the question incorrectly and I've answered it. We

1       intended -- I can testify that Melissa -- I'm going to  
2       presume Melissa mailed this letter, intended to mail  
3       the letter to William J. Wagner, Junior at 5419  
4       Roberts Road, Hamburg, New York 14075, but that's not  
5       the question you asked, so I can't answer the question  
6       you asked unless you clarify whether we intended to  
7       send the letter as addressed. We didn't simply send  
8       the letter to anybody at that address.

9       BY MR. ANDREWS:

10      Q. You intended to send it as addressed?

11      A. Correct.

12      Q. At that point, is the firm's policy that this  
13       individual at that address is the debtor; correct?

14      A. Okay.

15                    MR. WOODARD: Form.

16                    THE WITNESS: Again, are you asking me if  
17       at the time, February 9, 2015, the firm believed that  
18       the judgment debtor was William J. Wagner, Junior  
19       residing at the address listed on the letter, Chiari  
20       1? That is correct.

21                    MR. ANDREWS: So let's go back to Chiari  
22       165, event date is February 9, 2015 and the notes  
23       indicate that a William Wagner calls office. He lives  
24       at the Roberts Road address, claims not him. He's not  
25       a junior. Claims this has been REC stuff for last

1       six, seven years for D, presumably is debtor. Gave me  
2       last couple numbers of social security, SS, hashtag,  
3       paren is sixteen. Told him would note file and E-mail  
4       attorney, e-mailed MO, and I assume MO is Melissa  
5       Overbeck?

6                  THE WITNESS: Correct.

7                  MR. WOODARD: Just to clarify, I think  
8       that's the February 12th entry.

9                  THE WITNESS: That is correct. It is the  
10      February 12, 2015 entry. MO would be Melissa  
11      Overbeck, but your question was whether MO relates to  
12      Melissa Overbeck, and yes, MO does relate to Melissa  
13      Overbeck.

14                  (Whereupon, Exhibit Plaintiff's B, an  
15      E-mail, was marked for identification.)

16      BY MR. ANDREWS:

17      Q. You've been handed a document that's Chiari  
18      159, Plaintiff's Exhibit B. Have you ever seen this  
19      document prior to today?

20      A. I might have.

21      Q. It's an E-mail from Karen Sandford. She's a  
22      paralegal at your office?

23      A. She's a legal assistant.

24      Q. To Melissa Overbeck, who is an attorney at your  
25      office?

1       A. Correct, Melissa Overbeck is an attorney at my  
2 office.

3       Q. And it's dated February 12, 2015, and I'm just  
4 going to read what it states. A William Wagner called  
5 office who lives at the Roberts Road address, claims  
6 it's not him. Gave me last two numbers of his social  
7 security and didn't match what we have. Is that what  
8 it states?

9       A. Well, it actually says a William Wagner called  
10 office who lives at the Roberts RD address, comma,  
11 claims not him, period. Gave me two numbers of his  
12 SS.

13       Q. Last, last, but...

14       A. I'm -- I'm not reading anything that has -- oh,  
15 last two numbers. Gave me last two numbers of his SS  
16 and the number sign and didn't match with what we  
17 have, period.

18       Q. So SS and hashtag, is that your understanding  
19 that's social security? That's short for social  
20 security?

21       A. I would have interpreted that as social  
22 security number.

23       Q. Got that cleared up.

24                  Did Melissa contact you ever about this E-mail?

25                  MR. WOODARD: Are you asking --

1                   THE WITNESS: I don't know about the  
2 E-mail. I mean, it's -- if you're asking if she ever  
3 specifically contacted me about this E-mail, I don't  
4 know. I don't remember.

5 BY MR. ANDREWS:

6 Q. She wouldn't have e-mailed you?

7 A. Are you asking me whether she would have in  
8 usual course have e-mailed me?

9 Q. Strike that. Is there a protocol for an -- is  
10 she -- strike.

11                  Is Melissa an associate?

12 A. Correct, she's an associate.

13 Q. Is there a protocol for an associate at Chiari  
14 & Ilecki to follow when being notified from a legal  
15 assistant that a person is disputing being the debtor?

16 A. Yes.

17 Q. What is that protocol?

18 A. Melissa would or the attorney would attempt to  
19 verify whether the information provided by the person  
20 calling is correct and whether the address that we had  
21 for a debtor is correct.

22 Q. And looking at the activity log, is there  
23 anything to indicate that that was done in this case?

24 A. Yes.

25 Q. Show me where that is on the activity log.

1                   MR. WOODARD: You're talking just about  
2 after February 12, 2015?

3 BY MR. ANDREWS:

4                   Q. February 12th she gets an E-mail from Karen  
5 stating that a William Wagner called in who says he's  
6 not the debtor, and you just testified that the  
7 protocol is to verify this, so I'm asking for you to  
8 show me where on the activity log after 2012 (sic)  
9 Melissa or someone else from the firm did that  
10 verification?

11                  A. On the activity log, it appears that the next  
12 entry was June 5, 2015. Actually, I have to -- no,  
13 that is -- it's June 5, 2015.

14                  Q. So let's go back to the log. You received a  
15 call from Mr. Wagner on February 12, 2015, and then  
16 you received a second call from Mr. Wagner on March  
17 19, 2015; is that correct?

18                  A. According to this --

19                  Q. According to the activity log?

20                  A. -- Chiari 165, there was a telephone call on  
21 March 19, 2015, not from the debtor though. It was  
22 from somebody who claimed he was not the debtor. I  
23 mean, that's what the notes say. He is not debtor,  
24 advise we e-mailed attorney, so William Wagner called.  
25 The gentleman who called claims he is not the debtor.

1       Q. So two times your office receives a call from  
2 someone saying he's not the debtor, and the next  
3 action is a debtor exam is prepared and a letter sent  
4 to a process server to serve that person; is that  
5 correct?

6                   MR. WOODARD: Form.

7                   THE WITNESS: No, no, that actually is not  
8 correct.

9                   MR. ANDREWS: So what happened in between  
10 those two phone calls and the time that the subpoena  
11 was drafted and sent to the process server to be  
12 served? Is there --

13                  THE WITNESS: Again --

14                  MR. WOODARD: Form.

15                  THE WITNESS: -- your question is  
16 presuming something that didn't happen. So after the  
17 telephone call, and again, I'm referencing Chiari 165.  
18 After the telephone call, we received on May 11, 2015  
19 from the United States Postal Service a return of the  
20 information subpoena as unclaimed. A subpoena was  
21 prepared by the paralegal to be given to the attorney.  
22 The paralegal can't sign the subpoena. That subpoena  
23 didn't go out. Melissa before sending the subpoena  
24 reviewed the file as she's required to do, ran a  
25 search of Lexis, and actually in this case I think she

1 also -- she can testify to that, but she had told me  
2 she also checked at some point Real Info, which  
3 basically is a program that can find real property  
4 assessment information. Melissa would have done the  
5 review to determine whether we had a good address for  
6 the judgment debtor. She would have done that review  
7 on June 5, 2015.

8 BY MR. ANDREWS:

9 Q. And that review indicates that LX, that stands  
10 for Lexis?

11 A. I -- yeah, I believe she -- that would have  
12 been her initial for Lexis.

13 Q. It says -- looks like WW, comma, SR, period, so  
14 I assume that's William Wagner, Senior, and WW, comma,  
15 JR, period, William Wagner, Junior, live at same  
16 address. Advised action to be sure to serve correct  
17 DBTR, debtor?

18 A. Yeah, that is the notation.

19 Q. So what report did she rely on? Did you  
20 produce that reference report that she relied on?

21 A. I don't know if that Lexis report was produced.  
22 I doubt we could have produced a report from June 5,  
23 2015. We don't print or save the reports. You may  
24 have a report that would have had a date after June 5,  
25 2015. I do not know if it was produced.

1 Q. Is that the report you're referring to?

2 A. I have a report, Chiari 182. It's a report  
3 from Lexis dated December 31, 2015.

4 MR. WOODARD: Chiari 182 to 191.

5 THE WITNESS: Oh, I'm sorry.

6 BY MR. ANDREWS:

7 Q. So you have this report. You obviously printed  
8 this. It's not your procedure to print reports that  
9 you used to determine the address of someone you're  
10 going to serve a debtor exam on?

11 A. We do not print. It is my policy not to print  
12 the Lexis reports.

13 Q. But you printed this one?

14 A. Generally.

15 Q. You printed this one. So why did you print  
16 this one, the December 31st, and you didn't print the  
17 one that Melissa...

18 A. I think you -- this was printed in -- either in  
19 response to your disclosure request or in anticipation  
20 of litigation.

21 Q. Going back to your prior testimony, when you  
22 said there's a procedure in place to work accounts  
23 that have judgment, is one of the actions undertaken  
24 by the firm to send a subpoena duces tecum?

25 A. That is one of the enforcement mechanisms that

1 we employ when appropriate.

2 Q. And you send that to a debtor; correct?

3 A. A subpoena duces tecum can be sent to my  
4 debtor. In my office, it's usually sent to a debtor.  
5 It can be usually sent to non-debtors as well.

6 Q. Non-debtors that --

7 A. Non-judgment debtors.

8 Q. In what regard would you send a subpoena duces  
9 tecum to a non-debtor?

10 MR. WOODARD: Form, go ahead.

11 THE WITNESS: Well, again, there's an  
12 exhaustive list of cases, but probably the most common  
13 circumstance when you might send a subpoena duces  
14 tecum to a non-debtor is if you have an employer  
15 that's not cooperating with an income execution that  
16 you feel the person is employed and you want to get  
17 some documentation as to payment history or some  
18 information as to why they're not complying with an  
19 income execution. We used to send sometimes  
20 information to a bank if you needed to see bank  
21 records. Mostly when you need to see documentation is  
22 when it's really valuable as to non-debtors.

23 BY MR. ANDREWS:

24 Q. So fair to say you've sent it to a third-party  
25 when they have some connection to the debtor, usually

1 a financial connection?

2 A. You have to, that's the law. There has to be a  
3 reason why you're sending a subpoena to a third-party.  
4 You have to have a good faith belief that a  
5 third-party has information.

6 Q. Just so we're clear, if you're not sending it  
7 to the debtor, the third-party has to have some kind  
8 of connection to that debtor?

9 A. You have to have a reasonable belief that there  
10 is a reason why the third-party might have information  
11 or documentation.

12 (Whereupon, Exhibit Plaintiff's C, a Real  
13 Info print-out, was marked for identification.)

14 BY MR. ANDREWS:

15 Q. So you've got a document that's been marked as  
16 Plaintiff's Exhibit C, and it's based stamped Chiari  
17 192?

18 A. Okay.

19 Q. And it's -- the top it says real-info.com. Is  
20 this the -- is this a copy of a snapshot of a website  
21 that your firm utilizes to identify addresses of  
22 debtors?

23 A. Among other things, yes.

24 Q. And you testified that Melissa used this Real  
25 I'll refer to it as in order to identify the debtor's

1 address as 5419 Roberts Road; is that right?

2 A. I think I testified that I believe Melissa did  
3 run a Real Info or Real record search.

4 Q. Is this the search to the best of your  
5 knowledge that she ran?

6 A. It wouldn't have been the search because the  
7 date of this document is May 9, 2016, but just to make  
8 things easy, the results probably would have been the  
9 same. You know what, I have to -- actually, I have to  
10 take that back because I see there's a sale date,  
11 4/23/15, so that sale may not have appeared on the  
12 date that Melissa may have run her Real Info search.  
13 Generally, the information would be the same; however,  
14 in terms of the property description, the tax  
15 information would have a different tax year that might  
16 have a different assessed value.

17 Q. The ownership would be the same, assuming it's  
18 a refi; is that right?

19 A. In this case, because of the fact it was a very  
20 recent sale, I'm not sure that the 2015 transfer --  
21 you can see there was a transfer in 2015. I'm not  
22 sure that would have shown up on the search run by  
23 Melissa.

24 Q. And this particular document doesn't reference  
25 William J. Wagner, Junior at 5419 Roberts Road;

1           correct?

2           A. Well, it references -- it speaks for itself.

3           It references a William Wagner at 5419 Roberts Road,  
4           Hamburg, New York 14075.

5           Q. But the debtor is William J. Wagner, Junior.

6           It's a different name; correct?

7           MR. WOODARD: Form.

8           THE WITNESS: No, it's not.

9           MR. ANDREWS: William Wagner and William  
10          J. Wagner, Junior are not different names?

11          MR. WOODARD: Form.

12          THE WITNESS: They can be -- listen, they  
13          can be the same name. My name is William Ilecki.  
14          It's also William J. Ilecki. It's the same name. I  
15          mean, I answer to both. If you're arguing that  
16          William Wagner is identical in every respect to  
17          William J. Wagner, Junior, of course not. A J and a  
18          junior are missing.

19          BY MR. ANDREWS:

20          Q. I am going to show you a document that was  
21          produced in response to plaintiff's discovery demands.  
22          It's labeled Chiari 180 to 181. It's a Trans Union  
23          report. Have you ever seen this particular report  
24          before today?

25          A. I probably have seen the report. I don't

1 remember specifically if I have received the report.

2 Q. If you look on page 181, was this report run on  
3 February 12, 2015?

4 A. The notation on the report is February 12, 2015  
5 at 11:30 -- I'm sorry, 10:11 a.m. central standard  
6 time I think.

7 Q. If we look back at Chiari 165, the activity  
8 log, does the pulling of this report, can you identify  
9 that occurred based on that activity log, the events  
10 report? The pulling of this report on 2/12/2015, can  
11 you identify that on the events log?

12 A. A credit report was ordered based on the events  
13 log on February 9, 2015.

14 Q. So is it fair to say this was the report that  
15 corresponds with that?

16 A. It is fair to say that this report would have  
17 been created in response to the request on February 9,  
18 2015.

19 Q. Okay. Did you review this report?

20 A. I just said I'm not sure if I've ever looked at  
21 it before, I probably have.

22 Q. Can you tell based on the event log if an  
23 attorney reviewed it?

24 A. Yes.

25 Q. Did an attorney review it?

A. Yes.

Q. What date did the attorney review it on?

3 A. It appears June 5, 2015. Now, is it possible  
4 that an attorney could have reviewed it before June 5,  
5 2015? Just glance at it quickly, it's possible.

6 Q. Do you know if Melissa reviewed this report  
7 upon receiving the E-mail from Karen that Mr. Wagner  
8 called in in dispute that he was the debtor?

9 A. I don't know.

10 Q. Looking at this report, does anywhere on this  
11 report identify the Roberts Road address as an address  
12 for William Wagner, Junior?

13 A. No.

14 (Whereupon, Exhibit Plaintiff's D, a Trans  
15 Union report, was marked for identification.)

16 BY MR. ANDREWS:

17 Q. Looking at Chiari 165 again, the event log, the  
18 March 19, 2015 entry, telephone call, William Wagner,  
19 CO, dash, says he is not DBTR, debtor. Says his DOB,  
20 date of birth, is in [REDACTED] 1950. Dash, very  
21 upset that he is getting LTRS, letters, from our  
22 office. Dash, ADV, advise him can send a copy of DL,  
23 driver's license, and SS, pound, social security, if  
24 he'd like. Slash or dash, he says for us to just let  
25 WI, I assume that's William Ilecki, know that he is

1 not DBTR, debtor. Dash, ADV, advise we did e-mail  
2 ATNY. Is this -- did I read that right?

3 A. I would agree that the abbreviations, that  
4 you've correctly identified the language and the  
5 intention here.

6 Q. So and that was a -- Kristian; is that right?

7 A. Kristian.

8 Q. Yeah, Kristian, is that a legal assistant in  
9 your office?

10 A. Correct.

11 Q. Did you receive that E-mail from Kristian?

12 A. This was not an E-mail. This would -- this  
13 isn't created as an E-mail. It's actually an entry on  
14 our database.

15 Q. What I'm asking you is the note says advise we  
16 did e-mail attorney. Did you receive an E-mail from  
17 him, like how Karen e-mailed --

18 A. I know. I know. Your question was different  
19 though, so if you're asking me did I receive an E-mail  
20 from Kristian?

21 Q. Yes.

22 A. The answer is no, not in response to this  
23 telephone call. The answer is no.

24 Q. Did you receive some communication from  
25 Kristian in response to this telephone call?

1       A. I don't remember Kristian talking about the  
2 telephone call with me. I mean, it is possible she  
3 talked to me about it, but I just don't remember it.

4       Q. So when she says advise we did e-mail, there  
5 was no E-mail; that's incorrect?

6                   MR. WOODARD: Form.

7                   THE WITNESS: No, your question is  
8 incorrect. Your presumption is incorrect.

9                   MR. ANDREWS: Does it read --

10                  THE WITNESS: Read it, Seth. Advise we  
11 did e-mail attorney. We did. Karen e-mailed the  
12 attorney.

13                  MR. WOODARD: Plaintiff's B.

14 BY MR. ANDREWS:

15       Q. Okay, so we e-mailed the attorney in the past  
16 is what --

17       A. We did.

18       Q. Okay. Okay. That's what you're saying. Okay.

19                  MR. WOODARD: Should we take a five-minute  
20 break then? Is now a good time?

21                  THE WITNESS: Do you need one? I just  
22 want to say I don't need a break.

23                  MR. WOODARD: Are we off?

24                  (A discussion was held off the record.)

25 BY MR. ANDREWS:

1       Q. Is there a procedure for when a person provides  
2 identifiers, in this case some other social security  
3 number, as well as their date of birth, with respect  
4 to verifying if that's the debtor?

5       A. Yes.

6       Q. What's that procedure?

7       A. Well, again, it's a very broad statement, but  
8 the procedure involves an attorney receiving  
9 notification and the attorney having to review whether  
10 it be a credit report, a public record search, some of  
11 the other search tools we have such as Real Info,  
12 Lexis or Westlaw in making a determination whether we  
13 need additional information or whether the information  
14 provided by the person making the telephone call was  
15 correct or not correct.

16       Q. Is this policy in writing anywhere?

17       A. No.

18       Q. Was it a mistake to have the subpoena duces  
19 tecum served on the Roberts Road address?

20                   MR. WOODARD: Form.

21                   THE WITNESS: I don't know.

22 BY MR. ANDREWS:

23       Q. You don't know if it was a mistake?

24       A. No, I don't know.

25       Q. Was that subpoena sent to that process server

1       with the intention to have the person residing at the  
2       Roberts Road address served?

3                    MR. WOODARD: Object to form.

4                    THE WITNESS: Again, again, yeah, I mean,  
5       your -- the form of your question is wrong. I can  
6       answer, and then if you want to follow-up with a  
7       question, I'll provide you with testimony. It was the  
8       intention of the firm, as I testified, to serve the  
9       judgment debtor at the address provided in the --  
10      provided to the process server as long as the judgment  
11      debtor resided, worked or -- at that address or that  
12      address was the usual place of abode or dwelling  
13      place.

14                  MR. ANDREWS: Did you make any error or  
15      mistake at any point during your contacts with my  
16      client, Mr. Wagner, with respect to attempting to  
17      collect the judgment in favor of MJ Peterson, Inc.?

18                  MR. WOODARD: Object to form.

19                  THE WITNESS: Again, in terms of the  
20      contacts that were made with your client, could you  
21      please -- could you please specify which  
22      communications you're referencing?

23                  MR. ANDREWS: The February 9th letter.

24                  MR. WOODARD: Object to form.

25                  THE WITNESS: Okay. Here's -- okay, and I

1 understand the objection to form. We didn't send the  
2 February 9th letter to anyone other than the judgment  
3 debtor.

4 BY MR. ANDREWS:

5 Q. You sent it to William J. Wagner, Junior at  
6 5419 Roberts Road, Hamburg, New York 14075; correct?

7 A. Correct.

8 Q. Who resides at 5419 Roberts Road, Hamburg, New  
9 York 14075?

10 MR. WOODARD: Form.

11 THE WITNESS: I don't know.

12 MR. ANDREWS: So it's possible you're  
13 sending a collection letter to someone that's not the  
14 debtor?

15 MR. WOODARD: Form.

16 THE WITNESS: No, that's not possible.

17 BY MR. ANDREWS:

18 Q. That's not possible?

19 A. No. In this case, no.

20 Q. So you alleged as an affirmative defense bona  
21 fide error; correct?

22 A. In the answer, there is an affirmative defense  
23 of bona fide error.

24 Q. What's the error?

25 A. The error is as alleged by the plaintiff. To

1       the extent the plaintiff is correct in the plaintiff's  
2       allegation that there was a violation of the Fair Debt  
3       Collection Practices Act, we have a bona fide error  
4       defense as to that violation.

5           Q. What is the error?

6           A. I don't think there's an error right now. I  
7       haven't made the determination if there is an error  
8       and I'm not the judge.

9           Q. Is it defendant's position that William J.  
10      Wagner, Junior, if he's not the debtor, by serving  
11      that person with a debtor exam, is that an attempt to  
12      collect a debt?

13           MR. WOODARD: Object to form.

14           THE WITNESS: In this one I've just lost  
15      the question, and if you could repeat it?

16      BY MR. ANDREWS:

17           Q. Sure, I'll try to clean it up a little bit.

18           Is it defendant's position that service of a  
19      subpoena duces tecum, a debtor exam, is an attempt to  
20      collect a debt?

21           A. I would agree that if you're talking about  
22      service of a subpoena in a -- in a post-judgment  
23      enforcement proceeding.

24           Q. Correct.

25           A. That would be an attempt to collect a debt.

1 Q. And that subpoena was served on William J.  
2 Wagner; correct?

3 MR. WOODARD: Form.

4 THE WITNESS: I don't know. I don't know.

5 BY MR. ANDREWS:

6 Q. If we look at Chiari 166, on 6/24/2015 of the  
7 event log, action, dash, dash, AOS, dash, dash, ST --  
8 SDT, dash, dash, personal service, and that stands for  
9 affidavit of service, subpoena duces tecum, personal  
10 service, is that --

11 A. I would agree that that would be the reference  
12 in the abbreviation.

13 Q. So I'm going to ask you again, was William J.  
14 Wagner served with a subpoena duces tecum?

15 MR. WOODARD: Form.

16 THE WITNESS: I don't know.

17 BY MR. ANDREWS:

18 Q. When you read that, what does that indicate to  
19 you, someone was served?

20 A. What this entry indicates to me is that there  
21 was personal service of the subpoena duces tecum.

22 Q. And where was -- do you know the address to  
23 which that service was affected?

24 A. I don't have the document in front of me, but  
25 the affidavit would speak for itself as to the

1 address.

2 Q. Okay, fair enough. Do you have the burden as  
3 the debt collector, the attorney, to identify the  
4 correct debtor or is the burden on the individual that  
5 you're attempting to contact to identify themselves as  
6 the debtor?

7 MR. WOODARD: Form.

8 THE WITNESS: Burden in what respect? I  
9 mean, burden is a term of art.

10 MR. ANDREWS: Burden not from a legal  
11 standpoint, burden as it's your job in order to  
12 satisfy the judgment to the best of your firm's  
13 ability for your client?

14 MR. WOODARD: Form.

15 THE WITNESS: It's my job to attempt to  
16 satisfy the judgment as legally permissible to the  
17 best of my -- well, using reasonable means.

18 BY MR. ANDREWS:

19 Q. Does a person that you contact with respect to  
20 attempting to collect the judgment have any obligation  
21 or duty to provide you with information that you can  
22 ascertain their identity?

23 A. Yes.

24 Q. A non-debtor, a non-debtor has a duty to you?

25 MR. WOODARD: Form.

1                   THE WITNESS: I don't think you asked  
2 that.

3 BY MR. ANDREWS:

4 Q. I'll clarify it as a non-debtor.

5 A. A non-debtor can be required to provide  
6 information to me by way -- absolutely, a non-debtor  
7 can in some circumstances be required to provide  
8 information to me.

9 Q. So hypothetically speaking, my client, Mr.  
10 Wagner, is not the debtor?

11 A. Hypothetically speaking.

12 Q. Hypothetically speaking, is he required then to  
13 provide you information verifying that he is not the  
14 debtor?

15 MR. WOODARD: Form.

16 THE WITNESS: If I subpoena your client,  
17 that would be a requirement under the law.

18 BY MR. ANDREWS:

19 Q. What about a phone call, is he required to give  
20 you --

21 A. There is no legal requirement for a non-debtor  
22 to provide information identifying themselves as a  
23 non-debtor during a telephone call with a  
24 non-governmental agent. You're talking about a legal  
25 requirement and I want to stress that.

1       Q. I just want to know if it's Chiari & Illecki's  
2 position as a policy, as a firm, that when they reach  
3 out to consumers, to individuals that they believe is  
4 a debtor, but they're not sure of, which is clearly in  
5 this case based on your testimony --

6       A. No, it's not my testimony.

7                   MR. WOODARD: Object to form.

8                   THE WITNESS: Absolutely, so ask it  
9 differently. I'm not going to answer that question.

10                  MR. ANDREWS: Is my client the debtor?

11                  MR. WOODARD: Object to form.

12                  THE WITNESS: I don't know.

13 BY MR. ANDREWS:

14        Q. So you can't say today whether he's the debtor?

15        A. I cannot.

16        Q. So my question is this. In this instance, you  
17 don't know whether or not the person you've reached  
18 out to via a letter, an attempted information subpoena  
19 and a personal service of a debtor exam is the debtor;  
20 correct?

21                  MR. WOODARD: Form, object to form.

22                  THE WITNESS: Actually, see, again, I've  
23 already answered that, and really, I'm not trying to  
24 be difficult. You're missing the point. We did reach  
25 out to the debtor, to the judgment debtor. Every

1 action we've taken is against the judgment debtor.  
2 Whether the judgment debtor is your client, I can't  
3 answer that. That's the difference. What's with the  
4 smirks, Seth?

5 BY MR. ANDREWS:

6 Q. Because it's -- you can't have it both ways,  
7 Bill. You can't have it both ways.

8 A. You actually can.

9 Q. I don't want to get into another argument  
10 because it's not appropriate for this.

11 If a person fails to respond to a subpoena, is  
12 it common for your office to proceed with an  
13 enforcement motion?

14 A. Yes.

15 Q. And your office has --

16 A. Properly served subpoena.

17 Q. Yes, and your office has filed such motions in  
18 the past?

19 A. When appropriate, we have filed motions to  
20 enforce a subpoena.

21 Q. In fact, is it in your written procedures to do  
22 such?

23 MR. WOODARD: Form.

24 THE WITNESS: It's not in my written -- if  
25 you're talking about -- actually, I have to clarify.

1 I have a book that I've written, so it's in that.

2 BY MR. ANDREWS:

3 Q. I've got the eight hundred pages of it right  
4 here.

5 A. Well, I don't know what you have right there,  
6 but I have written on this issue, so that would be my  
7 policy and procedure in writing on that issue.

8 Q. So it's possible that if my client, Mr. Wagner,  
9 didn't retain an attorney to assist him in not having  
10 to proceed with attending a debtor exam based on being  
11 served with a subpoena duces tecum, you would proceed  
12 with an enforcement motion against him?

13 A. Not necessarily, we would proceed against an  
14 enforcement procedure against the judgment debtor.

15 Q. Well, you served him. You served someone at --  
16 you served someone at the Roberts Road address;  
17 correct?

18 MR. WOODARD: Object to form.

19 THE WITNESS: I'm presuming the -- as I  
20 said, the affidavit speaks for itself, so if you're  
21 saying the affidavit says we served someone with a  
22 subpoena duces tecum at the Roberts Road address?

23 BY MR. ANDREWS:

24 Q. Yes.

25 A. Okay, you're dealing with that presumption?

1 Q. Yes.

2 A. Okay.

3 Q. With that presumption, if there is a  
4 non-response to that subpoena, you would proceed with  
5 an endorsement motion; is that right?

6 MR. WOODARD: Form.

7 THE WITNESS: Again, I've answered that.  
8 It depends on whether service was proper. It also  
9 depends on other things. I mean, a judgment debtor  
10 could file a bankruptcy, okay? But we would not -- we  
11 would only proceed in appropriate circumstances with  
12 an enforcement proceeding. That is our policy.

13 BY MR. ANDREWS:

14 Q. Your policy is you wouldn't serve -- you would  
15 not serve a debtor exam on an address that you didn't  
16 believe the debtor resided at; correct?

17 A. Okay, again, again, we would not serve a  
18 subpoena except as provided by law.

19 Q. What I'm asking is --

20 A. I've answered.

21 Q. No, you --

22 A. If you want to go to another question, you can.

23 Q. You didn't answer. The question is you served  
24 -- you served the subpoena on...

25 A. Seth, you asked me if I would serve a subpoena

1 at an address. There are many ways to serve a  
2 subpoena.

3 Q. What I'm asking you is, you're serving that  
4 subpoena with the intention to serve the debtor;  
5 correct?

6 A. A judgment debtor.

7 Q. Yes.

8 A. In this case, a subpoena issued to a judgment  
9 debtor, the intention is to lawfully serve the  
10 judgment debtor.

11 Q. Okay. And you believed the debtor resided at  
12 5419 Roberts Road; correct?

13 A. I believe Melissa absolutely believed that that  
14 is the address where the judgment debtor resided.

15 Q. Despite two phone calls from Mr. Wagner saying  
16 that he's not junior?

17 A. Again, again, Melissa would have reviewed the  
18 E-mail from Karen Sandford and would have reviewed the  
19 events relative to the telephone calls as part of her  
20 analysis of whether -- of what the address was for the  
21 judgment debtor.

22 Q. If we look back on Chiari 166 and we look at  
23 the activity log event 629, the second, or I'm sorry,  
24 was it maybe the first? Yeah, no, maybe it is the  
25 second, I apologize. I think it's reviewed credit

1 report, LX, which I think is Lexis. DMV confirmed  
2 there's a William Wagner, W, slash, SS, pound, ending  
3 in 3918, comma, DOB, [REDACTED]/50, living at Roberts RD,  
4 period, not our DBTR, not our debtor. So seems that  
5 based on that notation, the firm's realized that the  
6 debtor doesn't reside at that address?

7 MR. WOODARD: Form.

8 THE WITNESS: That's absolutely incorrect.

9 MR. ANDREWS: You think there's two  
10 William Wagners living at that address?

11 MR. WOODARD: Form.

12 THE WITNESS: Well, you're asking what I  
13 think.

14 BY MR. ANDREWS:

15 Q. The firm, I want to know what the firm --

16 A. But I believe there is a notation.

17 Q. On page two looks it like WW, comma, SR,  
18 period, and WW, comma, JR live at the same address.  
19 So it's your position that there's two William Wagners  
20 at this address?

21 MR. WOODARD: Form.

22 THE WITNESS: It's my position that  
23 Melissa reviewed the file, and whatever other reports  
24 she looked at and inputted the information, that she  
25 believed it looks like WW, Senior and WW, Junior live

1 at same address.

2 MR. ANDREWS: I'm all set.

3 MR. WOODARD: Can give us just two  
4 minutes?

5 MR. ANDREWS: Yeah.

6 (A recess was taken.)

7 MR. WOODARD: No questions from us.

8 \*\*\*12:10 p.m.\*\*\*

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1 ERRATA SHEET  
2

## 3 PAGE LINE

4 change: 8 19 "CHASE" FOR CASE  
 reason: TYPO

5 change: 8 20 "NOR" FOR OR  
 reason: TYPO

6 change: 12 4 "REINGOLD" FOR "RYAN GOLD"  
 reason: TYPO

7 change: 20 25 "2006" FOR 2016 - 2 PLACES  
 reason: TYPO

8 change: 25 23,24 DELETE PERIOD AFTER ADDRESS  
 reason: REMAINDER UNINTELLIGIBLE

9 change: 34 18 "POSTAL SERVICE" FOR "POST"  
 reason: TYPO

10 change:  
 reason:

11 change:  
 reason:

12 change:  
 reason:

13 I WILLIAM ILFICCI hereby certify  
 14 that I did review and if necessary correct this  
 15 deposition and that the foregoing pages 1 through  
 16 77 are a true and accurate recording of said  
 17 proceedings.

18 PER ERRATA CHANCES - M.L.

19 Subscribed and sworn to before me this  
 20 day of January, 2017.

21 Melissa Lynn Overbeck  
 22 Notary Public

MELISSA LYNN OVERBECK Notary Public - State of New York Qualified in Erie County No. 020V6266364 Commission Expires July 23, 2020
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23 METSCHL & ASSOCIATES  
 Buffalo: 716-856-1906 Rochester: 585-697-0969

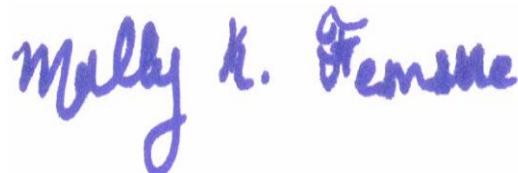
1 STATE OF NEW YORK  
2 COUNTY OF ERIE

3 I, Molly Fenske, a Notary Public in and for the  
State of New York, do hereby certify:

4 That the witness whose testimony appears herein  
5 before was, before the commencement of his deposition,  
6 duly sworn to testify to the truth, the whole truth  
7 and nothing but the truth; that such testimony was  
8 taken pursuant to notice at the time and place herein  
set forth; that said testimony was taken down in  
shorthand by me and thereafter under my supervision  
transcribed into the English language, and I hereby  
certify the foregoing testimony is a full, true and  
correct transcription of the shorthand notes so taken.

9  
10 I further certify that I am neither counsel for  
nor related to any parties to said action, nor in  
anywise interested in the outcome thereof.

11 IN WITNESS WHEREOF, I have hereunto subscribed my  
12 name this 8th day of November, 2016.

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14  
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18 Notary Public  
19 State of New York  
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24  
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